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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte BRIAN MARK SHUSTER

_____

Appeal 2009-001103
Application 09/837,071
Technology Center 3600

_____

Decided: September 3, 2009

_____

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

1   STATEMENT OF THE CASE

2   Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection

3   of claims 1-6, 8-25, and 27-36. We have jurisdiction under 35 U.S.C. § 6(b)

4   (2002).

5   Appellant invented systems and methods for aggregating information

6   from a plurality of remote information systems, such as bulletin boards, over

7   a wide area network, such that a reception device operating on an

8   aggregating information system can receive message data contained on the

9   plurality of remote information systems (Spec. 1:12-16).

10   Claim 1 under appeal is further illustrative of the claimed invention as

11 follows:

12   1.   An aggregated information system comprising:

13   a memory device;

14   a server adapted to be connected to a plurality of
15   reception devices and a plurality of remote information systems
16   via a wide area network, whereby said plurality of remote
17   information systems are adapted to receive original message
18   data and response message data from said plurality of reception
19   devices and provide said original message data and said
20   response message data to said plurality of reception devices;
21   and

22   an aggregating application connected to said memory
23   device and said server, said aggregating application adapted to:

24   retrieve said original message data and said response
25   message data from said plurality of remote information
26   systems;

27   store said original message data and said response
28   message data in said memory device;

1   configure said original message data and said response
2   message data from different ones of said plurality of remote
3   information systems to be arranged together as aggregated
4   message and response data relating to a topic; and

5   provide said aggregated message and response data to
6   said plurality of reception devices.

7   The prior art relied upon by the Examiner in rejecting the claims on

8 appeal is:

9   Herz   US 5,754,938   May 19, 1998
10
11   The Examiner rejected claims 1-6, 16-18, 21-25, 31-33, 35, and 36

12 under 35 U.S.C. § 102(b) as being anticipated by Herz; and rejected claims

13 8-15, 19, 20, 27-30, and 34 under 35 U.S.C. § 103(a) as being unpatentable

14 over Herz.

15   We AFFIRM.

16

17   ISSUES

18   Did the Appellant show the Examiner erred in finding that the

19 article/e-mail retrieval/grouping system of Herz discloses configuring said

20 original message data and said response message data from different ones of

21 said plurality of remote information systems to be arranged together as

22 aggregated message and response data relating to a topic, as recited in

23 independent claims 1 and 21?

24   Did the Appellant show the Examiner erred in finding that Herz

25 discloses separate remote information systems and reception devices, as

26 recited in independent claims 1 and 21?

27   Did the Appellant show the Examiner erred in finding that Herz

28 discloses "receiving additional response message data and additional

1   original message data directly from said reception devices, and aggregating

2   the additional data with the original and response message data," as recited

3   in dependent claims 4 and 23?

4   Did the Appellant show the Examiner erred in finding that Herz

5   discloses providing any data "to at least one of said plurality of remote

6   information systems," as recited in dependent claims 5, 6, 24, and 25?

7

8   FINDINGS OF FACT

9   *Specification*

10   Appellant invented systems and methods for aggregating information

11   from a plurality of remote information systems, such as bulletin boards, over

12   a wide area network, such that a reception device operating on an

13   aggregating information system can receive message data contained on the

14   plurality of remote information systems (Spec. 1:12-16).

15

16   *Herz*

17   Herz discloses customized electronic identification of desirable

18   objects, such as news articles, in an electronic media environment (col. 1, ll.

19   17-19).

20   The system automatically constructs both a "target profile" for each

21   target object in the electronic media, as well as a "target profile interest

22   summary" for each user. The system then evaluates the target profiles

23   against the user's target profile interest summaries to generate a user-

24   customized rank ordering listing of target objects most likely to be of

25   interest to each user so that the user can select from among these potentially

26   relevant target objects (col. 1, ll. 19-31; col. 55, ll. 60-65; col. 58, ll. 28-31).

1   A module uses interest feedback from users to construct a "target

2 profile interest summary" for each user, each of which corresponds to a

3 single topic of high interest for the user (col. 6, ll. 44-49).

4   There are a number of variations on the theme of developing and

5 using profiles of article retrieval, with the basic implementation of an on-line

6 news clipping service representing the preferred embodiment of the

7 invention (col. 7, ll. 45-48).

8   Articles are organized so that users can actively navigate among

9 groups of articles by moving from one group to a larger, more general group,

10 to a smaller, more specific group. This browsing provides an alternate

11 method of selecting a small subset of a large number of target objects, such

12 as articles (col. 7, ll. 27-33).

13   The method is equally useful for selecting which articles to read from

14 the electronic news groups and electronic bulletin boards, and can be used as

15 part of a system for screening and organizing electronic mail ("e-mail") (col.

16 56, ll. 39-43).

17   Users decide for themselves which of thousands of messages they find

18 interesting from among those posted to selected virtual communities, that is,

19 made publicly available to members of those communities. They may also

20 write additional messages and post them to the virtual communities of their

21 choice (col. 73, ll. 6-11).

1   PRINCIPLES OF LAW

2   *Obviousness*

3   Where the printed matter is not functionally related to the system, the

4   printed matter will not distinguish the invention from the prior art in terms of

5   patentability. *In re Gulack*, 703 F.2d 1381, 1385-86 (Fed Cir. 1983).

6

7   ANALYSIS

8   *Aggregating Original Message Data and Response Message Data*

9   We are not persuaded of error on the part of the Examiner by

10   Appellant's argument that the article/e-mail retrieval/grouping system of

11   Herz does not disclose configuring said original message data and said

12   response message data from different ones of said plurality of remote

13   information systems to be arranged together as aggregated message and

14   response data relating to a topic, as recited in independent claims 1 and 21

15   (App. Br. 6-10).

16   The Appellant argues that Herz does not disclose "original message

17   data and response message data" because Herz only discloses aggregating

18   articles, which is not message data (App. Br. 6-10). However, Herz

19   discloses that the aggregating of articles is exemplary, and that the system

20   may also be used to aggregating e-mails, which corresponds to the recited

21   message data (Ex. Ans. 6-8). E-mails would inherently include both original

22   and response data.

23   The Appellant also argues that Herz does not disclose configuring

24   message and response data to "be arranged together as aggregated message

25   and response data relating to a topic," because Herz only discloses preparing

26   lists based on similarities between a user search profile and a target profile,

6

1 and a profile is different than a topic (App. Br. 6-10). However, Herz

2 discloses target profile interest summaries that correspond to a single topic

3 of high interest to the user. Accordingly, Herz does disclose aggregating

4 relating to a topic.

5

6 *Separate Remote Information Systems and Reception Devices*

7 We are not persuaded of error on the part of the Examiner by

8 Appellant's argument that Herz does not disclose separate remote

9 information systems and reception devices, as recited in independent claims

10 1 and 21 (Reply Br. 2-10). Herz discloses a customized electronic

11 identification of desirable objects, such as news articles, and providing them

12 to users. The desirable objects are aggregated from a plurality of remote

13 information systems, and provided to users on reception devices separate

14 from the plurality of remote information systems.

15 The Appellant argues that Herz does not disclose aggregating e-mail

16 in the same way as aggregating articles, because electronic mail is private; it

17 is accessible only to the addresses or author. However, there is no indication

18 in Herz that e-mails are aggregating differently than articles.

19

20 *Additional Message Data*

21 We are not persuaded of error on the part of the Examiner by

22 Appellant's argument that Herz does not disclose "receiving additional

23 response message data and additional original message data directly from

24 said reception devices, and aggregating the additional data with the original

25 and response message data," as recited in dependent claims 4 and 23 (App.

26 Br. 10-13; Reply Br. 10). Herz discloses users writing additional messages

1   and posting them to the virtual communities of their choice, which are

2   located on remote information systems. The users would write such

3   additional messages from reception devices. These additional messages

4   would then be aggregated due to their posting on the remote information

5   systems.

6

7   *Providing Data*

8   We are not persuaded of error on the part of the Examiner by

9   Appellant's argument that Herz does not disclose providing any data "to at

10   least one of said plurality of remote information systems," as recited in

11   dependent claims 5, 6, 24, and 25 (App. Br. 13-14; Reply Br. 10-11). Herz

12   discloses users writing additional messages and posting them to the virtual

13   communities of their choice, which are located on remote information

14   systems. The additional messages are data provided to remote information

15   systems.

16

17   *Claims 8-15, 19, 20, 27-30, and 34*

18   We use our authority under 37 C.F.R. § 41.50(b) to enter a new

19   rejection of dependent claims 8-15, 19, 20, 27-30, and 34 under 35 U.S.C. §

20   103(a) as unpatentable over Herz. In this regard, we use a different rationale

21   than the one used by the Examiner. Specifically, dependent claims 8-15, 19,

22   20, 27-30, and 34 recite appending one of advertisement, hyper-link,

23   nomination, and voting data to the original and response message data. As

24   the advertisement, hyper-link, nomination, and voting data could be

25   subsumed within the original and response message data, and thus would not

26   functionally alter the operations of any of the remote information systems,

1   the reception devices, and the aggregator, dependent claims 8-15, 19, 20, 27-

2   30, and 34 merely recite printed matter that does not distinguish the

3   invention from the prior art in terms of patentability. *See In re Gulack*, 703

4   F.2d at 1385-86.

5

6   CONCLUSION OF LAW

7   On the record before us, Appellant has not shown that the Examiner

8   erred in rejecting claims 1-6, 8-25, and 27-36.

9

10   DECISION

11   The decision of the Examiner to reject claims 1-6, 8-25, and 27-36 is

12   affirmed.

13   We use our authority under 37 C.F.R. § 41.50(b) to enter a new

14   rationale for rejecting claim 8-15, 19, 20, 27-30, and 34 under 35 U.S.C. §

15   103(a) as unpatentable over Herz.

16   37 C.F.R. § 41.50(b) provides that, "[a] new ground of rejection

17   pursuant to this paragraph shall not be considered final for judicial review."

18   Regarding the new ground of rejection, Appellants must, WITHIN

19   TWO MONTHS FROM THE DATE OF THE DECISION, exercise one of

20   the following options with respect to the new ground of rejection, in order to

21   avoid termination of the appeal as to the rejected claims:

22   (1) *Reopen prosecution.* Submit an appropriate amendment of the
23   claims so rejected or new evidence relating to the claims so rejected,
24   or both, and have the matter reconsidered by the examiner, in which
25   event the proceeding will be remanded to the examiner. . . [; or]

26   (2) *Request rehearing.* Request that the proceeding be reheard under
27   § 41.52 by the Board upon the same record. . . .

1   No time period for taking any subsequent action in connection with

2 this appeal may be extended under 37 C.F.R. § 1.136(a) (2007).

3   <u>AFFIRMED, 37 C.F.R. § 41.50(b)</u>

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